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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,254	01/22/2004	Charles Edward Griffin JR.		2568

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EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/761,254	Applicant(s) GRIFFIN, CHARLES EDWARD	
	Examiner Bryon P. Gehman	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 1-13 is/are objected to.
- 8) ☒ Claim(s) 1-14 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3728

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because in lines 6 and 9, "said..." is employed and in lines 8-9, "means..." is employed. Correction is required. See MPEP § 608.01(b).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 7 and 8, "said second lateral sidewall" lacks basis for one such sidewall from "first and second lateral sidewalls". Similarly, in line 15, "said front sidewall" lacks basis for one such wall. In line 16, "first and second lateral sidewalls" is indefinite as to its relationship to the previously defined

lateral sidewalls. In line 19, "said attachment means" lacks clear antecedent basis, as "means to attach" in line 18 would define "attach means".

In claim 2, lines 5 and 5-6, "said front sidewall" lacks basis for one such wall from claim 1. See also claim 5, line 4.

In claim 3, lines 4-5, "leaving lonely said grasping handle" does not make sense, and "said grasping handle" lacks antecedent basis from parent claim 1. In lines 5-6 and 9-10, "said second lateral sidewall" lacks antecedent basis for one such wall. In lines 7 and 11, "within cavity" is ungrammatical. In line 8, "said front sidewall" lacks basis for one such wall from claim 1.

In claim 4, line 3, "said rear sidewall" lacks basis for one such wall from claim 1.

In claim 6, lines 2-3, the recitation "have a groove located adjacent to top edges" is indefinite whether a single groove or respective grooves are being defined. In lines 3-4, "a second lateral sidewall" is indefinite as to its relationship to the previously defined "shorter lateral sidewalls", one of these or something else. In lines 5 and 8, "said grooves" lack clear antecedent basis. See claim 10 for all of the same problems.

In claim 7, line 5, "said second opposed sidewall" lacks antecedent basis for one such wall. In line 8, "defines" is indefinite or ungrammatical, as the word is apparently modifying "partitions" and "sidewalls".

In claim 10, line 6, "receiving detachable cover" is ungrammatical.

In claim 11, line 2, "attachment means" is indefinite, as it is unclear if such is new recitation or referring to the previous "means" set forth in claim 1. In line 5, "said rear sidewall" lacks antecedent basis for one such wall.

In claims 12 and 13, lines 2-3 and 3-4, respectively, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 12 recites the broad recitation "hook and loop material", and the claim also recites "VELCRO" which is the narrower statement of the range/limitation. Also, where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or

trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop material and, accordingly, the identification/description is indefinite.

In claim 14, lines 2-3, the phrase "section generally L-shaped" lacks a verb to be grammatical. A similar phrase in line 5 is also ungrammatical. In line 6, the device is insufficiently defined to provide for "the outside corner" as being antecedently defined. In line 7, "for storage therein a quantity of toothpaste" is ungrammatical, as it also lacks a verb. In line 9, "the bottom side" lacks antecedent basis. In lines 12-13, "the internal cavity of individual toothpaste tubes" lacks antecedent basis and is indefinite as to how plural tubes define a single cavity. In line 15, "to lower and upper support section" lacks antecedent basis for a single such section. In line 18, "the exterior surface of said...sections" lacks antecedent basis that a single surface is common to both sections.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hibbs (1,975,691) in view of Bidmon (2,576,560) and Vollmer (6,857,526). Hibbs discloses a combined toothbrush and toothpaste storage device comprising a lower support section

(below 14), an upper support section (above 14), a toothpaste storage compartment (20), toothpaste storage tubes (17-19), apertures (at 16 providing access to the compartment and tubes). Bidmon discloses tube caps (13) with plugs to engage storage tubes to close the tubes. To modify the tubes of Hibbs employing tube caps as taught by Bidmon would have been obvious in order to seal the tubes from ambient conditions, as suggested by Bidmon. Vollmer discloses an adhesive strips (at 6) securing a storage device to a wall surface. To modify Hibbs employing adhesive strip as taught by Vollmer would have been obvious in order to support the storage device on a wall, as suggested by Vollmer. As to the L-shaped limitations, the shape of the device would appear to be a matter of design choice as much as claimed.

7. This application contains claims directed to the following patentably distinct species of the claimed invention: I) Figures 1-7; and II) Figures 8-10.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

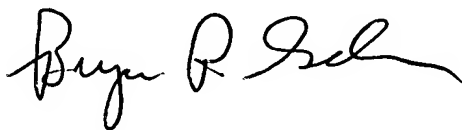
8. Claims 1-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are analogous toothpaste storage devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG